

BEFORE THE
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268-0001

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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

Complaint on Sunday
and Holiday Collections

Docket No. C2001-1

RESPONSE OF THE UNITED STATES POSTAL SERVICE
IN OPPOSITION TO THE CARLSON MOTION TO COMPEL REGARDING
DFC/USPS-10(b)
(June 28, 2001)

On June 21, 2001, Douglas Carlson filed a motion to compel a further response to DFC/USPS-10(b). The Postal Service had filed a partial objection regarding that item on June 8, and had filed a response on June 12. Mr. Carlson now moves to compel a further response that would provide him with facility-specific volume information. The Postal Service maintains its position that such data are not necessary for the purposes of this proceeding, and opposes his motion to compel. In order to address some of the concerns raised by his motion, however, the Postal Service is today also filing supplemental materials in further response to DFC/USPS-10(b). Those materials contain aggregate, nationwide volume data, and the Postal Service submits that the utility of such data vastly exceeds any potential utility of the facility-specific volume data of the type which Mr. Carlson seeks to compel.

In working with any substantial amount of data, there is always the risk of failing to see the forest for the trees. Mr. Carlson obviously intends to keep his focus on the trees. In this case, each tree represents the amount of processing done by a specific facility on a specific holiday over the last ten years. For approximately 350 facilities on ten holidays over the last ten years, the Postal Service has provided responsive

information in USPS-LR-2. That equates to approximately 35,000 trees. Rather than providing absolute volume for each data point, however, the Postal Service has provided the volume figure expressed as a ratio of the absolute volume to the FY 2000 average daily cancellations for the facility in question. Mr. Carlson, in his motion at pages 2-3, acknowledges that this procedure places the volume numbers in useful perspective. He wants another 35,000 trees, however, which would be obtained by further providing the absolute volumes for each facility, for each holiday, for each year.

The Postal Service submits that it is time to move the level of critical analysis from the trees to the forest. Mr. Carlson asserts:

Actual volume data provide an important insight into the adequacy of current holiday service levels because these data show the number of pieces of mail and, by inference, the number of postal customers using the service during the years when the Postal Service provided it. . . .
[T]he actual number of pieces of mail and the actual number of customers affected by holiday services are at least as probative of adequacy of service as the relation of holiday cancellation volumes to normal daily cancellation volumes at each facility.

Motion to Compel at 3-4. Mr. Carlson, however, totally fails to articulate why the issues he has identified need to be addressed at the facility level, rather than at the national level. The Postal Service has only objected to providing actual volume data at the facility level. To the extent that the Postal Service agrees with Mr. Carlson that actual volume figures may play a legitimate role in the analysis, it is today providing national actual volume figures for each holiday for each year. A very clear picture of the shape of the forest plainly emerges from these data. In terms of trends over time, the picture of the forest is so clear that further focus on the facility-level trees would essentially be a waste of time and effort.

Of course, to whatever degree Mr. Carlson nonetheless wishes to develop arguments based on facility-specific information, he already has massive amounts available. He can tell which facilities cancelled on each holiday, and which did not. For each facility, he can tell the direction and the proportions of change in cancellation volumes over the same holiday year to year, and he can compare across holidays within and between years. Moreover, in response to DFC/USPS-12, the Postal Service has, without specifying the identity of facilities, confirmed that several facilities nationwide had cancellation volumes on a specific holiday in the approximate neighborhood of the amount indicated in the question. While it is unclear why absolute numbers for individual facilities add anything to the picture now available from aggregated national data, the ability to obtain such data plainly exists, as long as specific volumes are not tied to identified facilities.

Repeatedly explicit in Mr. Carlson's arguments about holiday volume data is a fallacy which cannot remain unchallenged. He states at page 3 that "knowing the actual number of pieces of mail ... provides some insight into the number of postal customers who *needed* holiday service" (emphasis added). On the same page, he also asserts that a "volume of 250,000 indicates a substantial customer *need* for mail processing: if each customer deposited an average of two to three letters, possibly 100,000 East Bay postal customers *needed* the processing that the Oakland P&DC provided in 1998" (emphases added). The fallacy is the implicit assumption, unsupported in the motion or in anything else yet filed by Mr. Carlson in this proceeding, that the mere presence of a letter in the collection mailstream on a holiday necessarily translates into a need for immediate (i.e., same-day) processing and

dispatch.

There is, however, no reason to believe that all, or even most, mailers who deposit letters on a holiday are anything other than indifferent as to whether that mail is processed and dispatched that day or the next. Strong evidence that many are indifferent can be deduced from the fact that 99 percent of the collection boxes in which the mail is being deposited contain blank fields for the holiday collection pickup. This suggests that mailers deposit mail in those boxes on holidays because it is convenient for them to do so at that time, even without any firm basis for knowing whether the mail will leave the box that day or not.

Moreover, the argument in Mr. Carlson's motion focuses on Memorial Day, which is now always a Monday holiday. While Mr. Carlson cites volume figures for mail processed on Memorial Day as reflecting a "need" for holiday service, he has no basis to identify what portion of those pieces were deposited on Sunday, and what portion on Monday. If pieces deposited on Sunday do not need Sunday service, then why should we assume that those pieces need holiday service on Monday? Equally importantly, why should we assume that the pieces deposited on Monday need holiday service on Monday? In both cases, the answer is that we should not so assume.

Another way to put Mr. Carlson's misuse of the concept of "need" into context is to think in terms of delivery. If the last Monday in May were not a holiday, the Postal Service would undoubtedly deliver many hundreds of millions of pieces nationwide on that day. The presence of that magnitude of volume in the mailstream on Memorial Day, otherwise available for delivery, cannot be open to question. Yet Mr. Carlson could not credibly claim that this amount of volume indicates the amount of "need" that

customers have for delivery service on Memorial Day. In fact, most mailers have no compelling need for delivery on Memorial Day, have plenty of other activities to keep them busy, and are generally quite satisfied to await the delivery of that mail until the following day. Of course, the Postal Service recognizes that there are probably some customers who would prefer that normal delivery operations were conducted on Memorial Day. Indeed, some customers "need" delivery on Memorial Day to the extent that they are willing to pay Express Mail rates to obtain it. The fundamental point, however, is that you cannot point to the amount of mail in the system on a holiday and validly claim that it reflects the amount of need for holiday service.

That point is important in the context of the instant motion, because it highlights the glaring limitations of the discovery strategy (and perhaps ultimately, the theory of the case) that Mr. Carlson is apparently pursuing. The contours of the debate should now be clear. Data have been provided that indicate the current level of outgoing holiday mail service, and data have been provided to put that level of service in some historical context. At this stage, however, neither provision of further volume data, nor further cutting or parsing of the volume data that have already been provided, will shed any more light on the core issues at hand: the adequacy and efficiency of current holiday service. Putting the matter most bluntly, given whatever changes may have occurred over the years in holiday collection and mail processing practices, does any material portion of the mailing public care to a degree that would justify the disproportionate expenditure of resources that holiday operations require? If Mr. Carlson believes so, he would be well advised to rely on something other than the types of information he has sought from the Postal Service through discovery to support that

position. Mere volume figures, either absolute or relative, simply do not reach this fundamental question of the amount of *holiday* service that mailers really want.

Several other points made in the motion to compel facility-specific volume merit response. On page 4, the motion implicitly suggests that the Postal Service is attempting to use a claim of privilege to "hide" presumably harmful information about holiday service levels. The Postal Service's willingness to provide aggregated information at the national level belies that allegation. All parties involved will be able to marshal their arguments, pro and con, much more effectively with that information than they ever would be able to merely with the disaggregated, facility-specific information sought by the motion.

The motion also attempts to discount the importance of the long-standing policy of seeking to avoid disclosure of facility-specific volume information. Motion at 4. The Commission has recognized that policy over many years, and in many contexts. See Order No. 483, Docket No. MC83-2 (Feb. 7, 1983) at 2, 9; P.O. Ruling No. MC86-1/11 (Jan. 29, 1986) at 4; P.O. Ruling No. C86-3/9 (April 17, 1987) at 2 (noting "the well-established principle of permitting the Postal Service to protect its facility-specific volume information"); P.O. Ruling No. R87-1/12 (June 30, 1987) at 1-2; P.O. Ruling No. C96-1/5 (October 9, 1996) at 4-5 (directing production of systemwide volume information in lieu of facility-specific volume information); and P.O. Ruling No. R2000-1/72 (May 30, 2000) at 7-8, 10. The Commission has encouraged creative solutions which facilitate necessary analysis without the unnecessary disclosure of facility-specific volume information. See, e.g., Presiding Officer's Ruling No. MC86-1/11 (Jan. 29, 1986) at 4. The approach adopted by the Postal Service in this

instance is fully consistent with that policy, and provides ample information for the parties to pursue all relevant and material lines of argument. The suggestion on page 4 of the motion, that the standards to be applied in this service complaint case should be different than those that have consistently been applied in other Commission proceedings, is unavailing.

Lastly, Mr. Carlson raises the possibility of protective conditions. Motion at 5. There are several reasons why compelling disclosure of facility-specific volume information under protective conditions would be inappropriate in this instance. First and foremost, as explained above, the information is truly unnecessary. Thus, Presiding Officer's Ruling No. R87-1/12 (June 30, 1987) at page 2 declined to compel disclosure of facility-specific volume information, despite the offer of UPS to accept the material under protective conditions, because access to such information "would do little to advance" the analysis in question.

Second, protective conditions are not without costs, in terms of introducing greater procedural complexities. As one example, making information available under protective conditions creates difficulties when parties wish to rely upon that information, raising the specter of briefs filed under seal and closed hearings. The burdens associated with protective conditions are totally unwarranted in this instance.

Third, one of the boilerplate elements of protective conditions is agreement by the requesting individual to use the information only for purposes of analyzing matters at issue in that proceeding. Such an agreement has favorable prospects when the persons seeking access are, for example, consultants retained by their principals to conduct specific analysis in the course of specific litigation. In such a situation, the

principals usually do not obtain access to the data. Both the complainant and the only intervenor in this case, however, are individuals acting on their own behalf, and each has demonstrated interest on a wide range of postal issues through participation in many cases. It seems difficult to contemplate how such individuals, once they had *obtained facility-specific information that would reveal, for example, the relative amounts of mail flowing through specific facilities*, would be able to segregate that knowledge and ignore it when subsequently analyzing matters not at issue in this proceeding. This concern applies no matter how well-intentioned those individuals may be. Consequently, for all of these reasons, protective conditions in this instance would not constitute an appropriate resolution of the matter.

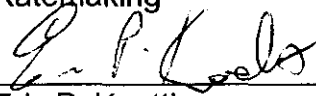
Therefore, the Postal Service submits that the information filed in the initial and supplemental responses to DFC/USPS-10(b) is sufficient for the purposes of analyzing the matters at issue in this proceeding, and requests that Mr. Carlson's motion to compel facility-specific volume information in further response to that item be denied.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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CERTIFICATE OF SERVICE

I hereby certify that, in accordance with section 12 of the Rules of Practice, I have this day served the foregoing document upon:

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A handwritten signature in black ink, appearing to read "E. P. Koetting", written over a horizontal line.

Eric P. Koetting

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